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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. ~~129~~

COUNTY COMMISSIONERS OF WICOMICO COUNTY, *Petitioners,*

vs.

SAMUEL BANCROFT, JR., *Respondent.*

Brief on Behalf of Respondent in Opposition to the Petition for Writ of Certiorari.

NICHOLAS P. BOND,
Solicitor for Respondent.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 424.

COUNTY COMMISSIONERS OF WICOMICO COUNTY, *Petitioners,*

vs.

SAMUEL BANCROFT, JR., *Respondent.*

Brief on Behalf of Respondent in Opposition to the Petition for Writ of Certiorari.

STATEMENT OF FACTS.

The respondent, a citizen of the State of Delaware, filed a bill in the Circuit Court of the United States for the District of Maryland, alleging that he was the owner of the mortgage bonds of the Baltimore, Chesapeake and Atlantic Railway Company and had been such a holder ever since the year 1896; that the defendants, the County Commissioners of Wicomico County, named in the bill, had levied taxes on the property of the Railway Company, which property had been

conveyed by way of mortgage to secure the complainant's bonds, and were threatening to sell the same for non-payment of such taxes; that the levying of the taxes if permitted, would put a lien upon the property prior to the lien of the mortgage securing the complainant's bonds, and the sale of the property for such taxes would deprive the complainant of such security. The bill prayed an injunction against the levying of the taxes and the Court below granted such an injunction as to a part of the property included in the bill, which decision was confirmed by the Circuit Court of Appeals.

An agreed statement of facts was filed in the case, from which the following facts appeared:

First. That in the year 1886 a railroad was incorporated by the State of Maryland, known as the Baltimore and Eastern Shore Railroad Company; that by the second section of the Charter of that Company the General Assembly of Maryland had provided as follows:

> "SECTION 2. *And be it enacted,* That said corporation shall have perpetual existence, and its franchises, property, shares of capital stock and bonds shall be exempt from all State, county, or municipal taxation for the term of thirty years, accounting from the date of the completion of said road between the *termini* mentioned in its charter."

Second. That the above mentioned road was completed between the *termini* mentioned in its Charter in August, 1891.

Third. That after such completion said road went into the hands of a Receiver and was sold under foreclosure of mortgage, such sale taking place in the year 1894.

Fourth. That the purchaser at the foreclosure sale organized a corporation, known as the Baltimore, Chesapeake and Atlantic Railway Company, under Section 187, of Article 23, of the Code of Public General Laws of Maryland, which

section provides, that in case of the sale of any railroad under foreclosure of mortgage, the purchaser may form a corporation for the purpose of owning, possessing, maintaining and operating such railroad by filing in the office of the Secretary of State a certificate of the name and style of such corporation, the number of directors, etc., etc.

Fifth. That the Statute of Maryland, providing for the organization of such a corporation, further provides as follows:

> "Section 188. Such corporation shall possess all the powers, rights, *immunities*, privileges and franchises in respect to such railroad, or the part thereof included in such certificate, and in respect to the real and personal property appertaining to the same, which were possessed and enjoyed by the corporation which owned or held such railroad previous to such sale under or by virtue of its charter and any amendments thereto and of any other laws of this State."

Sixth. The Baltimore, Chesapeake and Atlantic Railway Company so organized, issued its mortgage bonds, of which the complainant in the year 1896 became the owner of twenty of the par value of $1,000 each.

Seventh. That in the year 1899 the Court of Appeals of Maryland in a case between the Baltimore, Chesapeake and Atlantic Railway Company and the Mayor and City Council of Ocean City, Maryland, reported in 89 Maryland, page 89, held that the property formerly belonging to the Baltimore and Eastern Shore Railway Company was not exempt from taxation in the hands of the Baltimore, Chesapeake and Atlantic Railway Company, the above mentioned statutes, properly construed, not carrying such exemption.

Points of Laws.

Upon the aforegoing facts the Circuit Court and the Circuit Court of Appeals decided the following points of law:

First. That the complainant, a citizen of the State of Delaware, was entitled to maintain his bill and was not bound by the decision of the Court of Appeals of Maryland in cases to which neither the complainant nor the trustee in the mortgage deed of trust, securing the bonds held by him, were parties.

Second. That the United States Court was not bound to follow the decision of the Court of Appeals of Maryland in construing the above mentioned statutes, but that it appearing that the complainant had become a bondholder long before the decisions of the Maryland Courts were rendered, and at a time when there had been no decision of the State tribunals, he was entitled to the independent judgment of the Federal Courts, as to the law applicable to the case.

Burgess vs. Seligman, 107 U. S. 33.
Carroll County vs. Smith, 111 U. S. 562.
Anderson vs. Santa Anna, 116 U. S. 362.

Third. That section 188 of the Public General Laws of Maryland, which granted to the Baltimore, Chesapeake and Atlantic Railway Company all the powers, rights, *immunities*, privileges and franchises which were possessed and enjoyed by the Baltimore and Eastern Shore Railroad Company, granted to the Baltimore, Chesapeake and Atlantic Railway Company, among other things, immunity from taxation, which was possessed and enjoyed by the Baltimore and Eastern Shore Railroad Company.

Trask vs. McGuire, 18 Wallace, 391.
L. & N. R. R. Co. vs. Palmes, 109 U. S. 251.
Phoenix Insurance Company vs. Tenn., 161 U. S. 174.
State Board of Assessors vs. Morris and Essex R. R., 49 N. J. 193.

REASONS WHY WRIT SHOULD NOT BE GRANTED.

The respondent submits that there is nothing in the decision so rendered which justifies the granting of a writ of *certiorari*.

The points of law decided rest on the long established and well considered decisions of this Court, and constitute in fact merely the application of the well known and long decided rules of law to the facts in this particular case.

It is quite true that the bill alleged, and the Court below held, that the action of the County Commissioners in levying this tax was also the passage of a law impairing the contract, but this decision of the constitutional question was unnecessary to the decision of the case, it appearing that the complainant was entitled to relief whether he was right or wrong in the constitutional question involved.

The other points raised by the petitioner in his petition and brief are either immaterial or were not raised below, and certainly present no reason for the granting of the writ.

This respondent respectfully submits that the writ should be denied.

NICHOLAS P. BOND,
Solicitor for Respondent.